UNITED NATIONS

United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/C.1/SR.23
20 November 1998

ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 23rd MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Friday, 3 July 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

CONTENTS

Agenda item		*Paragraphs*
11	Consideration of the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997 (*continued*)	1-11

This record is subject to correction.

Corrections should be submitted in one of the working languages, set forth in a memorandum and/or incorporated in a copy of the record. They should be sent under the signature of a member of the delegation concerned to the Chief of the Official Records Editing Section, Room DC2-750, United Nations, New York.

In accordance with the rules of procedure for the Conference, corrections may be submitted within five working days after the circulation of the record. Any corrections to the records of the meetings of the Committee of the Whole will be consolidated in a single corrigendum.

V.98-57476 (E)

99-81072 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/WGGP/L.4/Add.1/Rev.1)

Part 3 of the draft Statute

1. **The CHAIRMAN** invited the Coordinator for Part 3 to introduce the report of the Working Group on General Principles of Criminal Law (A/CONF.183/C.1/WGGP/L.4/Add.1/Rev.1).

2. **Mr. SALAND** (Sweden), Coordinator for Part 3, introducing the report, said that the entire text of subparagraph (c) of article 31, paragraph 1, should be deleted and replaced with the word "pending", and that in consequence footnotes 9, 10 and 11 should also be deleted. In article 23, the Working Group had decided to delete paragraph 7 (c), since a cross-reference to the issue of command responsibility was no longer needed. The agreement reached on article 25, which was a very difficult article, was a major breakthrough, and he was grateful for the flexibility shown by many delegations. The attention of the Drafting Committee was drawn to the need to review the title, and to the fact that the text represented a delicate compromise.

3. Following long and arduous discussions on article 28, it had become apparent that defining an omission and the circumstances in which it created individual criminal responsibility was an almost impossible task. The group had therefore reluctantly agreed to delete the article, and to leave the question to be resolved in other parts of the Statute. Footnote 3 indicated that some delegations had not been altogether happy with that decision.

4. There had also been a long and difficult discussion on article 30, but in the end a reasonably satisfactory result had been achieved. However, as was pointed out in footnote 5, some delegations had not considered that a mistake of fact or a mistake of law could be grounds for excluding criminal responsibility. While he respected that view, he believed that the text, which had been the subject of extensive negotiations, could now be referred to the Drafting Committee.

5. A considerable amount of time had been spent on article 31, which was central to the Statute, and he was pleased to say that agreement had been reached on the entire text with the exception of paragraph 1 (c), which was still pending. There had been a general understanding in the group that the text was the best result that could be achieved in the circumstances, and he again commended the flexibility shown by delegations. He drew attention to the various footnotes to the article. Footnote 7 indicated that the word "law" at the end of paragraph 1 (a) was intended to refer to applicable law as defined in article 20. Footnote 8 dealt with a very important issue to which the group had devoted many hours of discussion. It read: "It was the understanding that voluntary intoxication as a ground for excluding criminal responsibility would generally not apply in cases of genocide or crimes against humanity, but might apply to isolated acts constituting war crimes." Another important interpretative statement was contained in footnote 12, which indicated that cases of voluntary exposure were understood to be dealt with under paragraph 2 of article 31, which enabled the Court to disregard grounds for excluding criminal responsibility which would otherwise be applicable.

6. The Working Group had concluded that articles 33 and 34 could be deleted, since the issues they covered had been subsumed under article 31, paragraph 3.

7. He proposed that the Committee should agree to transfer to the Drafting Committee the articles contained in the report, and agree to delete article 23, paragraph 7 (c), article 28, and articles 33 and 34.

8. **Mr. AVENDAÑO** (Mexico) said his delegation was not clear whether the footnotes referred to by the Coordinator were to be included in the final text of the Statute. If that was not to be the case, Mexico wished to insist that footnote 9 should be included in the text of article 31, paragraph 1 (c).

9. **Mr. SALAND** (Sweden), Coordinator for Part 3, said that as he had already explained, paragraph 1 (c) of article 31 was still pending, which meant that for the present the footnotes relating to it were deleted. The delegation of Mexico would have the opportunity to return to the issue at a later stage.

10. **The CHAIRMAN** said that, if he heard no objection, he would take it that the Committee wished to refer the articles contained in the report of the Working Group to the Drafting Committee.

11. *It was so decided.*

The meeting rose at 3.30 p.m.